

IN THE UNITED STATES DISTRICT COURT
THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

Thomas E. Perez, Secretary of Labor,)
United States Department of Labor,)
Plaintiff,) Case No. 3:13-cv-0339
v.) Judge Trauger
Angela Cotter, et al.) Magistrate Judge Bryant
Defendants.)

DENIAL OF DEFAULT

Pending is Plaintiff's Request to Enter Default (Docket Entry No. 16) against Defendant Elizabeth Gail DeBusk. The motion is denied as Plaintiff has not provided an adequate Declaration of Military Service as required by the Servicemembers Civil Relief Act of 2003 (50 App. U.S.C. 501 et seq.). While Plaintiff has provided an affidavit stating "to the best of affiant's knowledge or belief, Defendant DeBusk is not on active duty . . . ", this is inadequate to meet the requirements of the Act. The Act requires that affidavits be submitted that "state whether or not the Defendant is in military service and **showing facts necessary to support the affidavit**" (emphasis added). Since Plaintiff has provided no facts to support its contention Defendant is not in the military service, the request for entry of default must be denied. Information on the military status of an individual can be found at the Department of Defense website at <https://www.dmdc.osd.mil/appj/scra/scraHome.do>. That website provides an on-line search utility (SSN required) as well as a help button link that provides information on where requests for information can be sent (no SSN required) to determine whether a

particular individual is on active duty in the military. Alternatively, a sworn statement or declaration from the Defendant or someone in a position to know the military status of the individual could be accepted. Other factors, such as the age of Defendant if beyond the age for service can be considered. Since Plaintiff has not provided the necessary affidavit, the motion must be denied. Plaintiff may file a renewed request for default when the required Declaration is provided.

s/ *Keith Throckmorton*
Keith Throckmorton
Clerk of Court